

Summer 2010

## Remarks at the Dinner Celebrating the Centennial of the Journal Of Criminal Law and Criminology

Steven A. Drizin

*Northwestern University School of Law*

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Steven A. Drizin, Remarks at the Dinner Celebrating the Centennial of the Journal Of Criminal Law and Criminology, 100 J. Crim. L. & Criminology 1247 (2010)

This Symposium is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

# REMARKS AT THE DINNER CELEBRATING THE CENTENNIAL OF THE *JOURNAL* *OF CRIMINAL LAW AND* *CRIMINOLOGY*

**JANUARY 29, 2010**

**STEVEN A. DRIZIN\***

Good evening. It is my honor and pleasure to talk with you about the history of the *Journal of Criminal Law and Criminology* at this celebration of its one-hundredth birthday. Trying to distill the history of the *Journal* into a fifteen or twenty minute dinner-time speech is impossible. After all, there have been 471 issues of the *Journal* to date, totaling 88,567 pages. Fortunately, when I started to look into the *Journal's* history, my mind on these matters was not a complete blank slate. I had done some historical research once before, in the fall of 1985, twenty-four years ago when I was the Editor-in-Chief. Let me take you back to that time for a minute.

When the reins of the *JCLC* were turned over to me and my editors, the *Journal* was in bad shape. The previous editors had published only one of their four issues, meaning that if we were to get the *Journal* back on track, we had to publish a record seven issues in a single year. Angry authors were calling the *Journal* offices wondering when their articles were going to appear. Believe me when I tell you that hell hath no fury like the tenure-track professor. One such author had even hired a lawyer and threatened to sue the *JCLC* because he felt that a student comment had borrowed a bit too liberally from his work without proper attribution.

---

\* Steven A. Drizin is a Clinical Professor of Law at Northwestern University School of Law's Bluhm Legal Clinic where he has taught since 1991. He is also the Legal Director of the Law School's renowned Center on Wrongful Convictions. A 1986 graduate of Northwestern University School of Law, Drizin served as the Editor-in-Chief of *The Journal of Criminal Law and Criminology* in 1985-1986.

But by far the biggest crisis was the threat of extinction. Dean Bennett, in a cost-cutting measure, had proposed to eliminate the *Journal of Criminal Law and Criminology* and the *Journal of International Law and Business*, wondering why the law school needed any journals other than the *Law Review*. In the early days of the *Journal*, Dean Wigmore had saved the *Journal* when the University pulled the plug on its funding in 1921. In the 1985 crisis, two men came to my rescue—Fred Inbau and James Haddad. Professor Inbau, whom I will speak of shortly, was an Emeritus Professor at the time. I only spoke to him once in my life but recall his willingness to do anything in his power to keep the *Journal* going. Professor Haddad, on the other hand, was the Faculty Advisor, and he and I met frequently to discuss these crises. I do not know what arguments carried the day or how the issue was resolved—whether it was a by faculty vote or whether Professors Inbau and Haddad did some arm twisting—but I do recall relying to some extent on the *Journal's* history, the fact that it had the largest subscription of any law journal, and the fact that it was profitable in arguing to save the *Journal*. The bottom line is that these two men saved the *Journal*, and with it they saved me from the infamy of becoming the last EIC of the *JCLC*.

Three men stand out among all others in terms of their influence over the past one hundred years in the success of the *JCLC*. Those three are John Henry Wigmore, Robert Harvey Gault, and Fred Inbau. In her brilliant essay, “The Rise and Fall of the American Institute of Criminology” (which appears in Vol. 100, Issue 1), Jennifer Devroye, a 2009 Northwestern Law graduate, describes Wigmore’s early and enduring contribution to the *JCLC*. In 1909, Wigmore, along with Clarence Darrow, Roscoe Pound, and Municipal Court Judge Harry Olson, organized the first National Conference on Criminal Law and Criminology here at Northwestern on the occasion of the Law School’s fiftieth anniversary. Pound later described the Conference, which spawned the *JCLC*, as Wigmore’s “second great stroke” in criminal law and procedure, the first being his multi-volume treatise on the law of evidence.

In looking back at Dean Wigmore’s contributions to the *Journal*, I couldn’t help but notice an editorial he wrote in the third volume of the *Journal*, issue number five (1914). In this editorial, “The Bill to Make Compensation for Persons Erroneously Convicted of Crime,” Wigmore wrote that “[t]he state is apt to be indifferent and heartless when its own wrongdoings and blunders are to be redressed” and noted that one “glaring instance of such heartlessness, not excusable on any grounds, is the state’s failure to make compensation to those who have been erroneously condemned for crime.” Wigmore argued that “the wrongs done by the State through erroneous conviction,” although rare, cry out for compensation.

Wigmore wrote that a “few cases of this kind stand in our annals as perpetual blood marks and do more to weaken the cause of law and order than a thousand unjust acquittals.” He urged Congress to act on a bill proposed by Edwin Borchard giving the Court of Claims the power to compensate the wrongfully convicted at the federal level and urged the states to empower state courts to right these wrongs. I’d like to think that the Center on Wrongful Convictions, where I am the Legal Director, is carrying on Wigmore’s legacy in its fight to expose wrongful convictions and seek adequate compensation for those who are wrongfully convicted.

While Wigmore’s vision gave birth to the *Journal*, Robert Harvey Gault, a psychology instructor at Northwestern’s Evanston campus, nurtured the *Journal* from infancy to middle age. Gault was the second Editor-in-Chief of the *JCLC*, replacing James W. Garner, a political science professor at the University of Illinois, in 1911. He commandeered the *Journal* for the next fifty years. That has to be some sort of record.

In 1951, on the one-hundredth anniversary of the Law School, Gault wrote an essay on the importance of Criminology in the history of the Law School. In it, one can see his pride in the *Journal* and also his democratic vision of the *Journal*. “An unwritten law,” wrote Gault, guided his selection of articles in the *Journal*: “[E]ach volume shall comprise a Criminological ration, so balanced that whoever is enough interested in the field, may find something that appeals to his appetite.” He singled out the *Journal*’s use of experts on its Board as a major initiative and proudly noted that the *Journal* “circulates in all civilized countries and is one of the best known of the Northwestern University publications.” As an aside, I recently learned from Professor and Bluhm Legal Clinic Director Tom Geraghty that on a trip in 2005 to Botswana to promote clinical education in the African continent, he visited the law library at the leading law school there. He was proud to see that only one journal from Northwestern was on the shelves at the library—the *Journal of Criminal Law and Criminology*—and, I might add, it was up to date.

When Gault retired in 1960, an entire issue was dedicated to him. Of his contributions, the Editors of the *Journal* boasted that “greater changes have occurred” in the fields of criminology and criminal law in the fifty years that Gault presided over the *Journal* than “during the entire previous history of the human race” and “[t]hese changes were not only witnessed but also precipitated and guided by Dr. Robert Harvey Gault.”

During the 1950s and ’60s, in the midst of the United States Supreme Court’s due process revolution in criminal procedure, one man, above all others, guided the *Journal*’s course. That man, of course, was Fred Inbau. When he became EIC in 1965, Fred already had a long history with the *Journal*. He had been the *Journal*’s Managing Editor since 1945 and had

been publishing in the *Journal* frequently since his first article, "Scientific Evidence in Criminal Cases," appeared in 1933-34. Over the course of his illustrious career, Fred would publish well over a dozen articles in the *Journal*. Fred's influence at the *Journal* was far-reaching. He was a major mover behind the *Journal*'s name change in the 1950s to the *Journal of Criminal Law, Criminology and Police Science*, and his work in the area of scientific evidence was groundbreaking and light years ahead of his time. He recruited the best and the brightest students and young faculty members to work at the *Journal*, many of whom began their academic and legal careers by publishing articles in the *Journal*, including, among others, Marvin Aspen, James R. Thompson, James B. Haddad, and Joel Flaum. He stands as the only person in the *Journal*'s history to have two issues dedicated to his work, one that was published on the occasion of his retirement in 1977 and a second which was published on the occasion of his death in 1998.

Talking about Professor Inbau's contributions to the *Journal* is easy, but talking about his legacy with regard to police interrogations and confessions is much harder for me. Professor Inbau's most enduring legacy has been his professionalization of police work, particularly his development of psychological interrogation tactics to replace the "third degree" tactics that were so prevalent in the United States at the start of his career. His legacy is also marked by his career-long fight to persuade the United States Supreme Court to allow interrogators great freedom to use his techniques to secure confessions. He lost battles early in his career with the *Escobedo* and *Miranda* decisions, but since the end of the Warren Court era, he has won the war. To the extent that Fred can be said to have advocated for a bright line, he argued that courts should prohibit only those tactics that are "apt to produce a false confession."

My work, over the past decade, has been to expose the problem of false confessions in the age of psychological interrogation, to seek ways to prevent false confessions, and to develop ways to assist courts to distinguish between true and false confessions. I've done this by documenting and analyzing hundreds of such cases, by litigating these cases in court, and by training others on how to best defend false confession cases. At times, my work has been on a collision course with much of Professor Inbau's work on police interrogations.

Although Professor Inbau's view of police interrogation as a "practical necessity" has clearly carried the day to date, Professor Inbau's victory is not yet entirely secured. What Professor Inbau did not acknowledge (because he died before he had a chance to), and what his disciples at John E. Reid and Associates continue to ignore, is that many of the psychological tactics he espoused do, in fact, contribute to false confessions. To the

extent that further research can strengthen the connection between certain psychological tactics and false confessions, courts may begin to again look at some of these tactics with disfavor.

At a minimum, one battle that Fred is losing concerns his lifelong objection to a requirement that police electronically record police interrogations. Here in Illinois, this idea first surfaced in an article written by Bernard Weisberg, then a corporate lawyer and general counsel to the ACLU, in a 1961 symposium in—where else—the *JCLC*. Yale Kamisar attended that symposium, met Weisberg, and became the champion of this issue for forty years.

In 2005, a new champion was born to carry the torch and again the *JCLC* was the first to publish his work. The new champion was none other than Thomas P. Sullivan, the former United States Attorney for the Northern District of Illinois, and a partner at the Chicago law firm of Jenner & Block. Sullivan's groundbreaking surveys of police experiences with videotaping, first published in the *Journal of Criminal Law and Criminology* in the Spring of 2005 under the title "Electronic Recording of Custodial Interrogations: Everybody Wins," have helped persuade state legislators to require more recording. Since Sullivan's involvement, the number of states requiring recording has grown from two to twelve in the last five years and more states are expected to come online in the future.

I'd like to think that if Fred were alive today, he would support the work of the Center on Wrongful Convictions. I think that he would be proud of the work the Clinic had been doing to seek justice for the 150-odd men who were tortured by police officers operating out of Chicago's Area Two during the 1970s and 1980s. I hope he would be stunned at the numbers of proven false confessions that have surfaced in the post-DNA age, and I would like to think that rather than be an apologist for the police, he would have worked with us to try to see whether some of his techniques needed tweaking. I'd also like to think that he might even support more widespread use of electronic recording—a move his disciples at John E. Reid have only recently made.

Perhaps all of this is wishful thinking on my part, but one thing I am confident about is that he would have welcomed discussion of these issues on the pages of the *Journal* and opposed anyone in law enforcement who was unwilling to listen. In all the years that Fred was associated with the *Journal*, it was not just a forum for his crime control vision of criminal law and procedure. Fred was true to Robert H. Gault's vision—the *Journal* remained "fair and balanced"—and not in the way that Fox News uses those terms. It was, as Gault had decreed in 1951, "so balanced that whoever is enough interested in the field, may find something that appeals to his appetite."

Although Wigmore, Gault, and Inbau arguably exerted the greatest influences on the *Journal*, it was the authors who published in the *Journal* who helped secure the Journal's reputation as the pre-eminent journal in the United States. A list of the men and women who published in the *Journal* is a veritable "Who's Who," not only in the world of criminal law and criminology but in the public life of our country.

Listen to this eclectic roll call of social scientists, academics, politicians, defense lawyers and prosecutors, judges and law enforcement officers who have published in the *Journal*—John Henry Wigmore, Booker T. Washington, Clarence Darrow, August Vollmer, Thorsten Sellin, Roscoe Pound, Edwin Borchard, Herbert Wechsler, J. Edgar Hoover, Livingston Hall, John E. Reid, Adlai E. Stevenson, Marvin Wolfgang, Lloyd Ohlin, Marvin Aspen, James R. Thompson, Hugo Bedau, Arthur Goldberg, Constance Baker Motley, James B. Zagel, Jeremy Margolis, Marshall Hartman, Warren Wolfson, Abner Mikva, Alan Dershowitz, Yale Kamisar, Franklin Zimring, David L. Bazelon, Welsh White, Joshua Dressler, Wayne LaFave, Richard Leo, Paul Cassell, Barry Feld, Frank McGarr, Joel Flaum, James Holderman, and Tracey Meares. Those who are writing for the Centennial issue, several of whom have already published in the *JCLC*, will be joining this illustrious cast of characters.

Publishing in the *Journal* was a good luck charm for many on the road to becoming important public figures beyond academia. In 1932-33, and again in 1933-1934, while Director of the fledgling Bureau of Investigation, a young J. Edgar Hoover, still trying to persuade the federal government to fully fund a federal crime fighting force, published in the *Journal*. A year after first publishing in the *Journal*, in 1935, his dream came to fruition and the Federal Bureau of Investigation was born.

In the 1967-1968 issue, a judge on the D.C. Court of Appeals published an article entitled "Paradoxes in the Administration of Criminal Justice." A year or so later that judge was appointed by President Richard Nixon to become the Chief Justice of the United States Supreme Court. That Judge, of course, was Warren Burger, whose tenure on the Court was defined, in part, by his efforts to undo much of the Warren Court's rulings on criminal procedure, the very rulings that Fred Inbau so despised.

At least two Illinois Governors, Governors Thompson and Stevenson; at least two Supreme Court Justices, Justices Burger and Goldberg; at least two United States Attorneys General, Robert F. Kennedy and Nicholas Katzenbach, published in the *JCLC*. At least three United States Attorneys for the Northern District of Illinois, James R. Thompson, Scott Lassar, and Thomas Sullivan, and numerous federal judges from Illinois and beyond, including Abner Mikva, Joel Flaum, James Holderman, Marvin Aspen, James B. Zagel, Frank McGarr, and Constance Baker Motley, also wrote

for the *Journal*.

The *JCLC* has always had a special fondness for publishing articles of Northwestern's law faculty and has helped to launch or solidify the academic careers of many of Northwestern's law faculty over the years, some of whom stayed at the law school, and others who left to produce their scholarship elsewhere. In addition to Wigmore and Inbau, other Northwestern faculty who have published in the *Journal*, include Nathaniel Nathanson, Marvin Aspen, James R. Thompson, James Rahl, Dan Polsby, Paul Robinson, John Donohue, Robert P. Burns, Leigh Bienen, Leonard Rubinowitz, Joseph Margulies, Ronald Allen, James B. Haddad, Dorothy Roberts, Robert P. Burns, Steven Lubet, Shari Diamond, Cynthia Bowman, Locke Bowman, Rob Warden, Thomas Geraghty, Kenworthy Bilz, Jon Waltz, and yours truly.

Articles published in the *Journal* have had a profound effect in shaping criminal procedure in this country. The *New York Times* published an article a few years ago that broke the hearts of many law faculty members around the country: the article, written by Adam Liptak, spoke of how irrelevant most judges found legal scholarship and how few of them read law reviews anymore, let alone cited them. The sources for that article clearly were not talking about the *JCLC*. *Journal* articles have been cited in at least eighty-five cases decided by the Supreme Court and countless other courts throughout the country. A roll call of some of the Supreme Court cases include the most important decisions in the Court's history: *Miranda v. Arizona*, *Culombe v. Connecticut*, *Brewer v. Williams*, *Oregon v. Elstad*, *Brown v. Illinois*, *In re Gault*, *Roper v. Simmons*, *Harmelin v. Michigan*, *Solem v. Helm*, *Furman v. Georgia*, *Ring v. Arizona*, *Coker v. Georgia*, *Terry v. Ohio*, and *Roe v. Wade*.

Finally, as we celebrate the one-hundredth anniversary of the *Journal*, I would be remiss if I did not talk briefly about the lifeblood of the *Journal* for at least the last fifty years: the students who worked on the *Journal*. The role of students on the *Journal* began in 1931 with the preparation of case summaries for a section entitled "Recent Criminal Cases." In 1947, the section became known as "Criminal Law Case Notes and Comments" which began to include more in-depth analyses of cases and criminal law issues by student authors. Starting in the late 1950s, the student-published portion of the *Journal* was supervised by a Board of ten or so Editors, plus an EIC. James R. Thompson served as EIC of the "Comments & Abstracts" section in '58-'59, and as far as we can tell, he was the first student EIC whose name topped the masthead.

In March of 1970, students also took over responsibility for criminal law articles before taking over the operations of the entire *Journal* in March of 1971. The move to increase student control over the operations was

spearheaded by several student Board members, including Bradford Race, who is here with us today. The first EIC of the reconstituted *JCLC* was Jon E. Steffensen. In announcing the change in 1970, Fred Inbau gave the students a vote of confidence and wrote, "As for the readers who harbor any skepticism, perhaps the following from Francis Bacon's 'Of Youth and Age' is worth noting: 'The errors of young men are the ruin of business; but the errors of aged men amount but to this, that more might have been done and sooner.'"

Inbau's confidence in the students has paid off in spades in the years since the students took over the *Journal*. The quality of the *Journal* continues to be excellent. For years, writing the introduction or overview to the *Journal's* Supreme Court issue was a coveted prize, and many of the top scholars in the field were chosen to pen the Foreword. Today, the *Journal* still attracts the best and the brightest scholars in the field and over the years has published several symposia, on topics such as white collar crime, guns, capital punishment, and wrongful convictions, that have kept the *Journal* at the forefront of what's happening in criminal law and criminology. Of particular recent note is the *Journal's* fascinating symposium on homicide in Chicago, organized by Leigh Bienen in 2002. This issue broke new ground in so many ways, including its multi-disciplinary focus on a data set relating to homicides in Chicago from 1870-1930 and its use of an interactive companion website to the print publication. The Centennial Symposium issue, with its mix of established stars and emerging stars, is sure to do justice to the vision of Wigmore, Gault, Inbau, and the many others who have had a hand in sustaining this remarkable *Journal* these past one hundred years.

It's unclear in this age of the blogosphere just what role law reviews will play in helping to shape and influence the law. The *JCLC* will surely have to adapt to remain relevant and cutting edge. But if its history is any indication, and if this Symposium is any indication, our students are more than up to the task.

So let's raise a glass to the *Journal of Criminal Law and Criminology*, may it continue to thrive for another century!